HONOURABLE SRI JUSTICE P. DURGA PRASAD

CRIMINAL APPEAL NO.2270 OF 2004

Dated 25-03-2011

Between:

Bondili Pratap Singh

.....Appellant

And:

State, rep. by Inspector of Police, ACB, Nizamabad.

.....Respondent

HONOURABLE SRI JUSTICE P. DURGA PRASAD

CRIMINAL APPEAL NO.2270 OF 2004

JUDGMENT:

This appeal arises out of the conviction and sentence passed by the Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad dated 14.10.2004.

The appellant herein is the accused and he was prosecuted for the offence under Sections 7, 11 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, the Act)

The brief averments of the case of the prosecution are that the accused worked as Typist in the office of Commissioner, Municipal Council, Bodhan, Nizamabad District. The complainant (P.W.1) is a driver of A.P. State Road Transport Corporation, Bodhan Depot and he submitted an application to the Municipal Commissioner, Bodhan on 23.3.1993 duly enclosing the necessary documents requesting to issue Mutation Certificate and he met the accused who was looking after the mutation section and appraised him the purpose of his visit. Upon which the accused demanded the P.W.1 to pay an amount of Rs.500/- as illegal gratification for showing the official favour and for processing the file.

On 2.4.1993, the P.W.1 met the accused and requested him to pursue his file and then the accused reiterated his demand of payment of bribe of Rs.500/-. As the P.W.1 was not willing to pay the bribe amount, he lodged a complaint before the Deputy Superintendent of Police, A.C.B., Nizamabad Range, on 2.4.1993 at 3.00 p.m at Nizamabad.

On 6.4.1993 at 10.00 a.m on the complaint lodged by the complainant, the D.S.P., A.C.B., Nizamabad Range, registered a case in R.C.No.5/ACB-NZB/93 U/s.7 and 11 of the Act and took up the investigation after obtaining permission from the competent authority.

During the course of investigation, the DSP, A.C.B., Nizamabad secured the services of Ch. Venkateswara Rao and B. Bhoomaiah (P.W.2) and B. Hohn Benny and laid a trap against the

accused on 6.4.2003 at about 1.00 p.m at the office of Commissioner, Municipal Council, Bodhan, Nizamabad after complying all the formalities. The Phenolphthalein test conducted on the hand fingers of the accused gave positive results and the tainted amount of Rs.500/- was recovered from the possession of the accused at his instance. Thus, the accused is liable for punishment for the offence under Sections 7, 11 and 13(2) read with 13(1)(d) of the Act.

The learned Special Judge has framed the charges under Sections 7 and 13(2) read with 13(1)(d) of the Act against the accused and the accused pleaded not guilty for the said charges.

The prosecution in order to establish the said charges examined the complainant as P.W.1 and one of the mediator as P.W.2 and P.W.3 to prove the sanction and P.Ws.4 and 5 are the Investigating Officers and got marked Exs.P.1 to P.10 and M.Os.1 to 8. On behalf of the accused in defence, examined D.Ws.1 and 2.

The learned Special Judge after taking into consideration of both oral and documentary evidence, he found the accused guilty for the offence under Section 7 of the Act and convicted him to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- and also found the accused guilty for the charge under Section 13(1)(d) read with 13(2) of the Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.2,000/-.

Aggrieved by the said conviction and sentence, the present appeal is filed.

Now the point that arises for consideration is whether the prosecution could able to establish the charge under Sections 7 and 13(1)(d) read with 13(2) of the Act beyond reasonable doubt?

The learned counsel for the appellant has pleaded that the evidence of P.W.1 cannot be believed as he has given different version with regard to giving of his application for issuing the mutation certificate in his name and he has paid the said amount towards the vacant land tax for obtaining the mutation and not towards the illegal gratification. The learned counsel has further pleaded that the evidence of P.W.2 cannot be accepted as he was not present at the time of demand and acceptance of the bribe amount as he was standing out side the room of Town Planning Section when the alleged demand and receipt the amount by the accused. The learned counsel also further pleaded that the amount was received by the accused only towards the vacant land tax which has to be paid by the P.W.1 for obtaining mutation and the same was also established from the evidence of D.Ws.1 and 2.

On behalf of the learned Standing Counsel for the A.C.B., it is pleaded that the accused has not given any spontaneous explanation for receiving of the amount and subsequently set up the plea of receiving the amount towards vacant land tax and as such the same cannot be believed. The learned counsel has

further pleaded that the acceptance and demand made by the accused was established and the phenolphthalein test conducted on both the hand fingers of the accused shown positive, as such the prosecution could able to establish the demand and acceptance of the illegal gratification from the P.W.1 and as such they are entitled to draw the presumption under Section 20 of the Act.

According to the prosecution, on 23.3.1993, P.W.1 gave an application for issuing of a mutation certificate and met the accused who is looking after the mutation section and he demanded P.W.1 for payment of Rs.500/- towards illegal gratification and again the P.W.1 visited the office on 2.4.1993 and at that time also the accused reiterated the demand of illegal gratification of Rs.500/- for issuing the mutation certificate. Thereafter on the same day at 3.00 p.m, he gone to the A.C.B officials and lodged a complaint and the A.C.B officials, Nizambad Range on 6.4.1993 laid a trap and the trap was successful.

The complainant as P.W.1 in his Chief-examination has stated that he gave his application on 23.3.1993 in the municipal office seeking permission for construction of a house in his plot. He also gave another application for transfer of the plot in his name. The commissioner initialed on his application and directed him to hand over the same in inward section. When he enquired the Commissioner within what time he get the permission for construction and also transfer of plot in his name, he replied that it will not be done immediately and asked him to hand over the

application in inward section and to meet the A.O in his section. Accordingly, he gave his application and documents in inward section and met the A.O in his section and when he asked him about the mutation he told him that mutation will not be done without money and asked him to pay Rs.500/- for mutation of plot in his name. Then he told him that he does not want to pay the bribe. He replied that if he does not give bribe his work will not be done. According to him on 2.4.1993 when he met the Commissioner in his office and enquired him about the mutation of plot and also permission for the construction of house he directed him to meet the AO and accordingly he met the AO and the AO told him that whenever he gives bribe the plot will be mutated in his name. As he was not willing to pay bribe amount on the same day evening, he went to the office of the DSP, Nizamabad and told him as to what all happened and then ACB officials directed him to give written complaint and accordingly, he gave written complaint which is Ex.P.1. Then DSP asked him to come to his office on 6.4.1993 along with proposed bribe amount of Rs.500/- and Rs.150/- towards fee payable for mutation of the plot. On 6.4.1993, he reached the office of the DSP, Nizamabad at 10.40 a.m. Then DSP introduced mediators to him who were present there. Then he produced Rs.500/- proposed bribe amount and Rs.150/- towards fee payable for mutation. The mediators noted down the numbers of the currency notes. One Constable applied some powder to the currency notes of Rs.500/-. Then the constable who applied the powder to currency notes left the notes in his shirt pocket. DSP instructed him not to touch the notes and

give the same to AO only on demand. The DSP instructed one of the mediator Bhomiah to accompany him and give signal after the demand and acceptance of the bribe by the AO. According to him at 12.55 noon they went into the room of the Commissioner but the Commissioner was not there and from there they went to the room of Pratap Singh and he was also not there and went to the Town Planning Section in the office where they found the AO and Rajashekhar. Bhoomiah was also with him and was standing outside the room at the door. He asked the AO about mutation of the plot in his name and he enquired him whether he brought the bribe amount. Then he took out the tainted currency notes from his shirt pocket and gave them to the AO. He counted the currency notes and kept them in his left side pant pocket. He demanded more amount. Then he asked him about his mutation proceedings and at the same time he also asked Rajasekhar about his permission for constriction of house. He also gave Rs.1,000/- to the Rajashekhar towards his demand of bribe. Then AO asked him to follow him, Rajashekhar was also coming behind them. Meanwhile Bhoomaiah gave signal to the trap party. Himself and AO went to his section. Rajashekhar on the way went to the room of Commissioner and after that Rajashekhar came to the Section of the A.O and thereafter trap party came there. DSP asked him to wait outside and after some time DSP called him inside and enquired him as to what all happened and the same was incorporated in the proceedings.

In the cross-examination, he admitted that he did not meet

the AO directly in the office and he met the Commissioner first and on the direction of Commissioner, he met the AO. He also admitted that Rs.150/- which was taken by the DSP was not returned to him along with tainted amount. He denied that when he met the AO in the last week by March, 1993, he informed him that he already put up his mutation application to the Commissioner and he has to pay vacant land tax of Rs.500/- at the rate of 1% on the sale consideration of the flat. He admitted that the house site was purchased by him under two separate sale deeds for Rs.35,000/- and Rs.15,000/- respectively. He admitted that Bhoomaiah who accompanied him to the office of the AO was standing outside the room near the door when he entered in the town planning section. He denied that on the date of trap, he paid Rs.500/- to the AO representing it as vacant land tax of the site purchased by him and that the AO took the amount, counted and kept it in his pant pocket and asked him to come to Accounts Section for giving a receipt and that when himself and AO reached the accounts section, the ACB officials, intercepted the AO.

P.W.2 who is the accompanying witness admitted about his accompanying with P.W.1 to the office of the AO and according to him, they went to the office of the Commissioner and the Commissioner was not found in the seat. From there, they went to the filing section. They found two persons in that section. P.W.1 went near to them while he stood at door. P.W.1 took Rs.500/- from his shirt pocket and gave the said amount to one person. After that P.W.1 took Rs.1,000/- and gave to the 2nd person. Both

of them kept the amounts in their pant pockets. In the cross-examination, he admitted that in Ex.P.4 there were scorings of words, correction of words, over writings and interpolated and also adding words in between the lines and he do not know who made those corrections and why they were made. He do not know the conservation by P.W.1 with the AO and Rajasekhar in the Town Planning Section..

Therefore, according to him, he went along with P.W.1 and he has seen the P.W.1 paying Rs.500/- to the accused but he was standing outside the room of the Town Planning Section. According to P.W.1, for the first time he has gone to the office of the Municipal Council on 23.3.1993 and gave the application to the Commissioner and asked him to give the same in the inward section and then he gave the application and met the accused and then the accused told him that it would be done if he pays Rs.500/- towards bribe and thereafter he again visited the office two or three times and finally on 2.4.1993 and met the accused as per the instructions of the Commissioner of the Municipal Council and again the accused demanded Rs.500/- as illegal gratification and the said facts were mentioned by the P.W.1 in his complaint Ex.P.1. Therefore, the contention of the learned counsel for the appellant that the evidence of P.W.1 is contradicting with regard to the approaching the accused officer on 23.3.1993 and on 2.4.1993 cannot be accepted as the version of P.W.1 was supported by his complaint Ex.P.1. Thus, from the above, it is established that the accused has demanded for payment of bribe amount of Rs.500/-

from P.W.1.

With regard to the acceptance of the said bribe amount, P.W.1 has stated about his going to the office of the Commissioner along with P.W.2 on 6.4.1993 and he went to the Commissioner's room and he was not found and then he went to the accused and he was also not found and then they again gone to the accused and then they found the accused and another person and then he gave Rs.500/- to the accused and Rs.1,000/- to the 2nd person Rajasekhar. P.W.2 who is the accompanying witness has supported with regard to payment of Rs.500/- to the accused. But according to him, he was standing at the door of the said section and he did not enter into the said section and he did not hear the conversion between the P.W.1 and the accused.

In that regard, the appellant's counsel has pleaded that the said amount was paid towards vacant land tax and not towards the bribe amount and as such the accused took the P.W.1 to the Accounts Section for issuing of the receipt and in the meanwhile, the trap party has intercepted and recovered the amount from the accused and the accused in support of his contention that the amount was paid towards vacant land tax has examined D.Ws.1 and 2.

D.W.1 is the Attender working in the Municipality and according to him on 6.4.1993, the ACB officials came to their office on that day at about 1.00 p.m and himself, accused and Rajasekhar were present. At that time, P.W.1 came there and

paid Rs.1,000/- towards the discharge of the loan he has contracted to Rajasekhar and he counted it and kept it in his left side pant pocket and thereafter, P.W.1 gave Rs.500/- to the accused towards vacant land tax and he received it and kept it in his left side pant pocket and asked P.W.1 to come to the accounts section so as to receive a receipt and all of them went towards Accounts Section. Then ACB officials went to the accounts Section and he remained in his section. In the cross-examination, he has stated that one hour later i.e., after they went to accounts section, he came to know that they were trapped. He admitted that he has not revealed to any body from the date of trap till now about the loan transaction spoken to by him and the amount fo Rs.500/- being paid towards vacant land tax.

Therefore, the said facts stated by D.W.1 were not spoken from the date of trap till he gave his evidence. Therefore, his evidence with regard to payment of the amount by the P.W.1 to the accused towards vacant land tax cannot be believed. More over he does not know as to why P.W.1 has paid the amount to the accused and he did not explain as to how he came to know about the payment made by the P.W.1 to the accused towards vacant land tax.

D.W.2 who worked as Accountant in the year 1993 in the Municipality and according to him on 6.4.1993 at 1.10 p.m Rajasekhar and the accused and P.W.1 entered into accounts section where he was sitting and when they entered inside, the accused told him that he has to issue a receipt to P.W.1 for vacant

land tax and then immediately ACB officials entered into accounts section and started questioning Rajasekhar and when they questioned him that he demanded bribe and received the amount from P.W.1, he has answered that he received that amount towards discharge of loan contracted by P.W.1. When the ACB officials questioned, the accused whether he had taken bribe, he has answered that he received that amount towards vacant land tax charges. Then the ACB officials also enquired him as to his presence in the section and he has replied that he was working as Accountant in that section. In the cross-examination, he admitted that he do not know where the vacant lands belonging to P.W.1 is situated. He do not know what was the amount due to be paid towards vacant land tax by P.W.1. He did not verify the records after the ACB officials left that place to ascertain what was the amount due from P.W.1 towards vacant land tax. He admitted that depending upon the extent only, the amount towards vacant land tax would be assessed. It might be round figure like Rs.500/- or plus or minus the round figure. He heard when Rajasekhar was telling ACB officials that he received the amount from P.W.1 towards discharge of loan amount paid by him to P.W.1. Therefore, D.W.2 is not aware what was the vacant land tax to be paid by the P.W.1 and according to him, the vacant land tax has to be paid basing on the extent and not on the sale consideration for purchase of the said plot. But he has stated that the round figure like Rs.500/- or plus or minus. Even though he stated in his chief-examination that the accused informed him that he has to issue a receipt to P.W.1, he did not state for what amount he has issue the

receipt and as rightly observed by the learned Special Judge, the receipt book which was not with the D.W.2 at the time of visit of the ACB officials, he has not spoken about his preparing to issue the receipt to P.W.1 and more over he has stated that he heard along with others what the accused has stated to the A.C.B officials. But the post-trap proceedings does not disclose any explanation given by the accused at the time of recovery of the amount from the possession of the accused. Therefore, the version of D.W.2 cannot be believed. Thus, according to the Investigating Officer P.W.4, a successful trap was laid and the tainted amount was recovered from the possession of the accused. If really the amount was paid by P.W.1 to the accused towards vacant land tax, there is no necessity for the AO to collect the amount from the P.W.1 and then go to the Accounts Sections for getting the receipt. He can as well direct the P.W.1 to go and pay the said amount in the Account Section. Admittedly, there is no demand for payment of vacant land tax by P.W.1 by the Municipality. Therefore, the said version of the accused that the amount was received by him towards the vacant land tax cannot be believed. Thus, from the evidence of P.Ws.1, 2 and 4, the acceptance of the amount by the accused was established.

P.W.4 has stated that when he has enquired the accused officer with regard to acceptance of the illegal gratification from the complainant, he gave an affirmative reply. Therefore, the accused has not given any spontaneous explanation with regard to the

receipt of the said amount.

The contention of the learned counsel for the appellant is that even though the spontaneous explanation is given by the accused, the same was not recorded by the P.W.4 in Post-trap proceedings. But no such suggestion was given to P.W.4 in his cross examination.

The learned Standing Counsel for A.C.B has pleaded tht when the spontaneous explanation is not given by the accused at the time of trap, it has to be presumed that the said version was put up subsequently as defence and in support of his contention he relied upon a decision rendered in **Tarsem Lal v. State of Haryana**[1] wherein the Apex Court has held:

> "When no explanation was given by the accused at the time of search and recovery and explanation given at the time of trail that he received the amount for depositing it in small saving scheme found to be an after-though."

In the present case also, as observed above, the accused has not given any spontaneous explanation at the time of search and recovery of the amount from his possession and he has set up the plea of receiving the amount towards vacant land tax only during the course of trial. Therefore, in view of the above said decision, the plea of the accused is only an after-thought.

The learned counsel for the appellant has pleaded that as on the date of trap, the file was not pending with the accused and

he has already processed the file and sent to the Bill Collector. P.W.2 is the accompanying witness has admitted in his cross-examination that the mutation file Ex.P.6 was produced by the Bill Collector before the DSP on the date of trap. He admitted that the Bill Collector informed the DSP that he received the file of Mutation relating of P.W.1 on 30.3.1993 and that he had put up a note on 31.3.1993 and that the file was pending with him since 31.3.1993.

P.W.4 is the Investigating Officer also admitted that the file Ex.P.6 was put up on 30.3.1993 calling for report from TPO and Bill Collector and sent the file to the Commissioner and the Commissioner initialed the file on 31.3.1993 and then it was sent to the bill collector. The Bill Collector also put up a note on 31.3.1993 and the file was pending with him on the date of trap. Therefore, from the above said evidence of P.Ws.2 and 4, it is clear that the said file was recovered from the possession of the Bill Collector on the date of trap and the Bill Collector has already put up a note on 30.3.1993. The 2nd Investigating Officer also admitted in his cross-examination that the file relating to P.W.1 was kept pending since 31.3.1993 because of heavy work load. Therefore, from the above, it is established that the Bill Collector has put up the note as on the date of trap. Even though the AO has put up a note on 30.3.1993 on the application of P.W.1 and calling for report from TPO and the Bill Collector has sent the file to the Commissioner and the Commissioner initialed the file on 31.3.1993 and sent the same to the Bill Collector. Therefore, after

the report of the Bill Collector, the file has to come back to the accused officer for finalizing the issuance of mutation certificate. It is not the case of the accused as on the date of trap, he has already recommended for issuance of mutation certification in favour of the P.W.1. Therefore, it cannot be said that the official favour is not pending with the AO as on the date of trap. Therefore, the prosecution could be able to establish that the accused has demanded and accepted the illegal gratification from P.W.1 and the same was recovered from his possession. As such they are entitled for drawing of presumption under Section 20 of the Act. The learned Special Judge has rightly found the accused guilty for the offence under Section 7(1)(d) read with Section13(2) of the Act and rightly imposed the sentence for the said offences proved by prosecution against the accused and the said finding of the learned Special Judge does not warrant any interference by this Court.

In the result, the criminal appeal is dismissed and the conviction and sentence passed by the Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad dated 14.10.2004 is hereby confirmed.

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P.DURGA PRASAD,J.

Date:25.03.2011.

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HONOURABLE SRI JUSTICE P. DURGA PRASAD

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Dated 25-03-2011

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[1] AIR 1987 Supreme Court 806